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1 PO MALDONADO
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 ----- x
5 BENJAMIN CASE, et al,

6 Plaintiffs,
7
8 -against-

9
10 CITY OF NEW YORK, et al,
11 Defendants.

12 ----- x
13 Date: August 16, 2017
14 Time: 11:08 a.m.

15
16 DEPOSITION of PO MICHAEL MALDONADO, held at
17 CORPORATION COUNSEL, 100 Church Street, New
18 York, New York, pursuant to Notice, taken before
19 Judeen M. Denniston, a reporter and Notary
20 Public within and for the State of New York.

21
22
23 JOB NO.: 2682459
24
25

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1 **PO MALDONADO**

2 **A p p e a r a n c e s :**

3 **On behalf of Plaintiffs:**

4 **GIDEON ORION OLIVER, ESQ.**

5 **277 Broadway, Suite 1501**

6 **New York, New York 10007**

7 **(646) 263-3495**

8 **By: Gideon Orion Oliver, Esq.**

9 **Gideon@gideonlaw.com**

10

11

12 **On behalf of Defendants:**

13 **CORPORATION COUNSEL**

14 **100 Church Street, 4th Floor**

15 **New York, New York 10007**

16 **BY: AMY ROBINSON, ESQ.**

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2 S T I P U L A T I O N S

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4 IT IS HEREBY STIPULATED AND AGREED by
5 and between the attorneys for the respective
6 parties herein, that filing, sealing and
7 certification be and the same are hereby
8 waived.

9

10 IT IS FURTHER STIPULATED AND AGREED that
11 all objections, except as to the form of the
12 question shall be reserved to the time of
13 the trial.

14

15 IT IS FURTHER STIPULATED AND AGREED that
16 the within deposition may be signed and
17 sworn to before any officer authorized to
18 administer an oath, with the same force and
19 effect as if signed and sworn to before the
20 Court.

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* * * * *

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1 PO MALDONADO

2 know?

3 A. I don't remember.

4 Q. Did Officer Koch tell you anything
5 about the circumstances leading up to Mr.
6 Kushner's arrest on the day of the incident?

7 A. No.

8 Q. Okay. What tour are you working
9 today?

10 A. 08:00 by 16:35.

11 Q. What's the last tour that you
12 worked?

13 A. Sunday.

14 Q. Same hours?

15 A. No.

16 Q. When you reviewed the videos, did it
17 refresh your own independent recollection
18 about any of the events of the date of
19 incident?

20 A. Yes.

21 Q. How did it refresh your
22 recollection?

23 A. There was a group blocking the
24 sidewalk with houses.

25 Q. Okay. Watching the video refreshed

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2 your own independent memory of seeing that?

3 A. Yes.

4 Q. In what other ways aside from the
5 fact of there having been a group, as you
6 say, blocking the sidewalk with houses, in
7 what other ways did watching the video
8 refresh your recollection?

9 A. Seeing Chief Esposito.

10 Q. So before you saw the video, did you
11 remember that Chief Esposito was present at
12 that location?

13 A. Yes.

14 Q. Okay. What about seeing the...

15 Withdrawn.

16 In what ways did seeing the video
17 refresh your recollection regarding Chief
18 Esposito?

19 A. He gave the warnings.

20 Q. When you say he gave the warnings,
21 what do you mean?

22 A. He gave the warnings to clear the
23 street because they were blocking pedestrian
24 traffic.

25 Q. Okay. In what ways that you have not

1 PO MALDONADO

2 any of them move on after they stopped to
3 look?

4 A. I couldn't tell you. I don't know.

5 Q. I'm asking you what you saw.

6 A. I didn't continue to look at them.
7 My focus wasn't on them.

8 Q. Where was your focus?

9 A. On the group that was standing in
10 front of me.

11 Q. What else did you see with respect
12 to that group while you were focused on them?

13 A. Them not listening.

14 Q. Tell me what you mean by that.

15 A. They were given orders to move and
16 they wouldn't move.

17 Q. What orders were they given to move?

18 A. To clear the streets or they're
19 going to be arrested.

20 Q. Who gave the order to clear the
21 streets?

22 A. Chief Esposito.

23 Q. How long after you got there before
24 the first order was given?

25 A. I said 10 to 15 minutes.

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2 A. From seeing the video? No.

3 Q. Okay. After he gave that order, what
4 happened next?

5 A. One second. Can you hang on one
6 second?

7 Q. Sure. Take your time. After he gave
8 the order you just described telling people
9 what you just said, what happened next?

10 A. He went to grab someone from the
11 crowd.

12 Q. Okay. That's the moment that you saw
13 on the video, right?

14 A. Yes.

15 Q. Before the moment on the video, had
16 Chief Esposito given any other orders?

17 A. Prior to that?

18 Q. Yes.

19 A. Yes.

20 Q. Which other orders had Chief
21 Esposito given before that?

22 A. He gave the same order numerous
23 times.

24 Q. How many times?

25 A. I can't tell you. I'm not sure.

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2 you see Mr. Kushner block before he was
3 arrested?

4 A. He was blocking the sidewalk. No one
5 was able to move. Everybody was stopped,
6 nobody was able to move back and forth
7 through the crowd.

8 Q. So when you testified earlier that
9 people were walking all around the area and
10 it was chaos, you're now saying nobody was
11 able to move because of the crowd?

12 A. Through the crowd.

13 Q. Tell me what you mean?

14 A. No one was able to move through the
15 crowd.

16 Q. So how many people did you see... So
17 you didn't see Mr. Kushner at all before he
18 was arrested, right?

19 A. Not that I remember.

20 Q. Okay, so how can you say that he was
21 blocking pedestrian traffic before he was
22 arrested?

23 A. He was part of the group in front.

24 Q. Okay, and did you see him as part of
25 the group when he was arrested?

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2 Kushner was released? Okay, well his DAT says
3 that he was released at 21:40. I'm showing
4 you a copy. It's Plaintiff's 26, and
5 Plaintiff's 28, which is an OLPA, all caps,
6 sheet, also lists 21:40 as the time that he
7 was released. So, sitting here today do you
8 know if Mr. Kushner was released around
9 21:40?

10 A. According to this.

11 Q. Okay, fair enough. What's the next
12 thing that you did with respect to Mr.
13 Kushner's case, after Mr. Kushner was
14 released with a DAT?

15 A. Say that one more time?

16 Q. Sure. What's the next thing you did
17 related to Mr. Kushner's case, after he was
18 released with a DAT?

19 A. Nothing.

20 Q. You didn't go and meet with a
21 district attorney about his case?

22 A. Yes sir, I did.

23 Q. Okay, when did you go and meet with
24 a district attorney about his case?

25 A. That I don't remember, the date.

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2 Q. Do you remember who you met with?

3 Okay. I'm going to show you what's been
4 marked as Plaintiff's 27. Let me know when
5 you've had a chance to read through that.

6 Okay. You see where the date on the
7 bottom is December 2, 2011?

8 A. Yes.

9 Q. Does that refresh your recollection
10 about when you met with the prosecutor in
11 this case?

12 A. Yes.

13 Q. And was it December 2, 2011?

14 A. Yes if that's what it says.

15 Q. Well, I'll put it back in front of
16 you.

17 A. Yes.

18 Q. Okay. See at the top where it says,
19 "ADA O'Brien"?

20 A. Okay, yes.

21 Q. Did you meet with an ADA O'Brien on
22 December 2, 2011?

23 A. Yes.

24 Q. What did you tell ADA O'Brien about
25 Mr. Kushner's arrest?

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2 A. I said he was blocking the sidewalk.
3 From building to curb, no one was able to go
4 through. No pedestrians were able to walk
5 through that crowd.

6 Q. And who told you that he had been
7 doing that before he was placed under arrest?

8 A. Who told me?

9 Q. Mm-hmm (no verbal response).

10 A. I must have seen him there if I
11 signed that.

12 Q. You must have seen him there, if you
13 signed that? Okay, so in other words... I'll
14 ask you the question again. Who told you?

15 MR. OLIVER: Could you read the
16 question back? About who told you
17 what...

18 (The requested portion was read
19 back by the reporter.)

20 A. I don't recall who told me.

21 Q. Fair enough. I'm going to show you
22 now, what's been marked as Plaintiff's 22. I
23 just would like you to please review the
24 answers to the interrogatories here and let
25 me know if there are any answers that you

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2 C E R T I F I C A T E

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4 STATE OF NEW YORK)

5 :ss

6 COUNTY OF QUEENS)

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8 I, JUDEEN M. DENNISTON, a Shorthand
9 Reporter and Notary Public, within and for
10 the State of New York, do hereby certify:

11 That, the witness whose deposition
12 is hereinbefore set forth, was duly sworn by
13 me and that such deposition is a true record
14 of the testimony given by such witness.

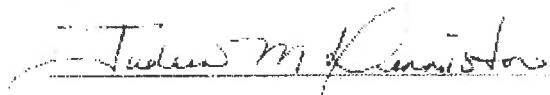
15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or marriage and that I am in no way
18 interested in the outcome of this matter.

19 IN WITNESS WHEREOF, I have
20 hereunto set my hand this 30th day of
21 August, 2017.

22

23

24



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JUDEEN M. DENNISTON